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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SINDICATO DE EMPLEADOS Y  
12 TRABAJADORES DE LA  
13 INDUSTRIA EL CAMPO Y EL  
COMERCIO DEL ESTADO 29  
C.R.O.M. et. al.,

14 Plaintiffs,

15 vs.

16 CREDIT MANAGERS  
17 ASSOCIATION OF CALIFORNIA,  
INC.,

18 Defendant.  
19

CASE NO. 07-CV-2365 W (LSP)

**ORDER DENYING  
PLAINTIFFS' MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER (Doc. Nos. 4, 5)**

20 On December 18, 2007 Plaintiffs, two Mexican labor unions, commenced an  
21 action against Defendant Credit Managers Association of California ("CMA") alleging  
22 breach of contract and seeking accounting and equitable relief. (Doc. No. 1.) Pending  
23 before the Court is Plaintiffs' motion for a Temporary Restraining Order ("TRO") to  
24 restrain CMA from paying out \$896,389.81 to certain creditors, to a temporary receiver  
25 appointed by a California Family Law Court, or to anyone else that may have a claim  
26 to the funds. The Court decides the matter on the papers submitted and without oral  
27 argument. See S.D. Cal. Civ. R. 7.1(d.1). For the following reasons, the Court  
28 **DENIES** Plaintiffs' motion for a TRO.

1 **I. BACKGROUND**

2 Plaintiffs are two Mexican labor unions whose constituent members are the  
3 employees of two Mexican companies, Alissimo S.A. de C.V. (“Alissimo”) and Resinas  
4 Laguna, S.A. de C.V. (“Resinas”). (*Mot. for TRO 2-4.*) Both Alissimo and Resinas did  
5 substantial business with two American companies, FlexTrim California, Inc. and  
6 FlexTrim North Carolina, Inc. (collectively, “FlexTrim”). (*Id.*) Plaintiffs allege that  
7 FlexTrim owes Alissimo and Resinas \$896,389.81 for their products and/or services.  
8 (*Mot. for TRO 3.*) According to Plaintiffs, FlexTrim is now insolvent.<sup>1</sup> (*Mot. for TRO*  
9 *2.*)

10 Allen and Mary Kay Jones are two formerly married individuals currently involved  
11 in property dissolution proceedings in California Family Law Court (“California Court”).  
12 (*Id. 3.*) The California Court appointed Dennis Murphy (“Murphy”) temporary receiver  
13 of certain entities and affiliates which were alleged to form part of the Jones’ marital  
14 estate. Allen Jones is for purposes of this litigation the owner of FlexTrim. (*Richman*  
15 *Decl. Ex. F 2-3.*)

16 Defendant CMA is a non-profit corporation which appears to assist companies,  
17 like FlexTrim, in managing assets and satisfying creditors. (*Richman Decl. Ex. A.*) On  
18 or about May 21, 2007 FlexTrim assigned all its business assets to CMA for liquidation  
19 and payment of creditor claims. (*Mot. for TRO 2.*)

20 On May 22, 2007 Plaintiff alleges that Alissimo and Resinas were joined in the  
21 marital dissolution proceedings “without notice, opportunity to object, or any due  
22 process.” (*Mot. for TRO 3.*) Apparently, Alissimo’s and Resinas’s bank accounts were  
23 frozen and their assets seized.<sup>2</sup> (*Id.*) It is unclear when Alissimo and Resinas learned  
24 about the asset freeze and seizure, but it appears to be shortly after the May, 22 2007  
25 order. (*Jose Corral Decl. ¶ 15; Francisco Elorza Decl. ¶ 15.*) Although Plaintiffs’ motion

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26 <sup>1</sup>Plaintiff describes FlexTrim as commencing a “common law bankruptcy proceeding,”  
27 an unusual description.

28 <sup>2</sup>Defendant’s opposition disputes that the receiver has taken steps to shut down  
Alissimo or Resinas or seize their assets. (*Def.’s Opp’n 4.*)

1 fails to connect the dots, Alissimo/Resinas both seem to insinuate that they are  
2 separately owned companies (*i.e.*, not part of the marital estate) and the California  
3 court should not have been put them under the stewardship of receiver Murphy. (*Jose*  
4 *Corral Decl.* ¶ 11-14; *Francisco Elorza Decl.* ¶ 12-14.)

5 On July 6 and 13, 2007 Alissimo and Resinas made respective claims to CMA  
6 for the monies owed to them by FlexTrim. (*Richman Decl. Ex. C.*) Plaintiffs allege that  
7 these monies have not yet been paid. (*Mot. for TRO 5.*)

8 Plaintiffs, the two Mexican labor unions, are allegedly owed significant sums for  
9 unpaid wages and benefits by Alissimo and Resinas. On December 13, 2007 Plaintiffs  
10 (litigating in the state labor court of Baja California in Tijuana [hereinafter, “Mexican  
11 Court]) received an order temporarily freezing both companies’ assets in order to satisfy  
12 the payment of wages. (*Mot. for TRO 4.*) According to Plaintiffs, under the Mexican  
13 Constitution and Labor Code employees have preferential rights over all other  
14 creditors. (*Id.*) However, it is unclear whether Alissimo and/or Resinas are actually  
15 insolvent. (*See Quijano Decl.* ¶ 6.) Presumably, Plaintiffs assume they have standing  
16 to pursue this suit because they should be able to “step into the shoes” of their creditor-  
17 employers and recoup assets from CMA.

18 On December 19, 2007 Plaintiffs moved for a TRO because on December 21,  
19 2007 the California Court is scheduled to hear receiver Murphy’s motion to approve  
20 a “letter agreement” between CMA and Murphy to distribute the marital estate.<sup>3</sup> (*Mot.*  
21 *for TRO 5.*) Plaintiffs fear that the letter agreement’s terms do not satisfy Alissimo’s  
22 or Resinas’s open claims and shifts the balance of FlexTrim’s assets (assigned to CMA)  
23 to Murphy. (*Id.*) Plaintiffs fear that if Alissimo/Resinas do not get paid by CMA,  
24 Alissimo/Resinas will be unable to pay Plaintiffs. (*Id.*) Thus, Plaintiffs seek an order  
25 restraining CMA from paying \$896,389.81 to FlexTrim creditors, receiver Murphy, or  
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27 <sup>3</sup>Because Alan Jones owns FlexTrim, dissolving the marital estate necessarily implicates  
28 dividing FlexTrim’s assets and liabilities. Apparently, this requires coordination between  
receiver Murphy (responsible for distributing marital assets) and CMA (responsible for  
distributing FlexTrim’s assets). (*Mot. for TRO 5.*)

1 anyone else claiming an interest. On December 20, 2007—after Plaintiffs provided an  
2 extremely brief notice period—Defendant CMA opposed the TRO.

## 3 4 **II. LEGAL STANDARD**

5 The Federal Rules of Civil Procedure outline the procedures a federal court must  
6 follow when deciding whether to grant a temporary restraining order. See Fed. R. Civ.  
7 P. 65. The standard for granting a temporary restraining order is the same as the  
8 standard for entering a preliminary injunction. Bronco Wine Co. v. U.S. Dep't of  
9 Treasury, 997 F. Supp. 1309, 1313 (E.D. Cal. 1996); Franklin v. Scribner, Civil No. 07-  
10 0438 BTM (LSP), 2007 WL 1491100, at \*3 (S.D. Cal. May 21, 2007). The Ninth  
11 Circuit has prescribed the following equitable criteria for determining whether to grant  
12 injunctive relief:

13 (1) the likelihood of the moving party's success on the merits; (2) the  
14 possibility of irreparable injury to the moving party if relief is not granted;  
15 (3) the extent to which the balance of hardships favors the respective  
16 parties; and (4) in certain cases, whether the public interest will be  
17 advanced by granting the preliminary relief. The moving party must show  
18 either (1) a combination of probable success on the merits and the  
19 possibility of irreparable harm, or (2) the existence of serious questions  
going to the merits, the balance of hardships tipping sharply in its favor,  
and at least a fair chance of success on the merits... [T]he required degree  
of irreparable harm increases as the probability of success decreases.

20 Owner Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co., 367 F.3d 1108, 1111  
21 (9th Cir. 2004) (quoting Miller ex. rel. N.L.R.B. v. Cal. Pac. Med. Ctr., 19 F.3d 449,  
22 456 (9th Cir. 1994)). The temporary restraining order “should be restricted to serving  
23 [its] underlying purpose of preserving the status quo and preventing irreparable harm  
24 just so long as is necessary to hold a hearing, and no longer.” Granny Goose Foods, Inc.  
25 v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 439 (1974);  
26 accord L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197, 1200  
27 (9th Cir. 1980); Del Toro-Chacon v. Chertoff, 431 F. Supp. 2d 1135, 1139-40 (W.D.  
28 Wash. 2006).

1 **III. DISCUSSION**

2 **A. Threshold Issues**

3 There are several threshold issues which make granting Plaintiffs' TRO motion  
 4 particularly difficult. First, Plaintiffs filed the TRO on mid-day Wednesday and wished  
 5 to obtain a hearing and order by Thursday afternoon. This provided Defendant—and  
 6 the Court—with very little time to respond to Plaintiffs' request, especially in the week  
 7 prior to Christmas. Although providing such short notice is not unheard of,  
 8 circumstances are more forgiving when the defendant knows a TRO application may  
 9 be forthcoming. See Squillacote v. Meat & Allied Food Workers, 534 F.2d 735, 743  
 10 (7th Cir. 1976) (holding sufficient notice where opposing counsel was given TRO  
 11 documents 24 hours before the order was entered, but had several days warning that  
 12 TRO may be filed).<sup>4</sup> Here, this does not appear to be the case.

13 Additionally, Plaintiffs' Motion for TRO is devoid of any legal analysis.  
 14 Although TROs necessarily turn on their underlying facts, Plaintiffs do nothing to  
 15 assure the Court that, given the complicated factual, standing, comity, and conflict of  
 16 laws issues, the Court has jurisdiction to grant or deny this motion. See Fowler v.  
 17 United States, 258 F. Supp. 638, 644 (C.D. Cal. 1966) (stating that a TRO will not  
 18 ordinarily be granted if any debate or doubts are created by the record as to the merits  
 19 of the claimed relief or power of the court to act).

20 For instance, Plaintiffs have sued CMA, and only CMA, and have moved to  
 21 restrain the company from releasing funds to the receiver or other creditors. (*Mot. for*  
 22 *TRO 2*.) This request necessarily implicates the rights of the receiver and third party  
 23 creditors not before the Court. See, e.g., Doe v. Mathews, 420 F. Supp. 865, 870  
 24 (D.N.J. 1976) (holding that no temporary restraining order can be granted if plaintiff  
 25 fails to join an indispensable party). Moreover, any TRO issued could be in direct

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 27 <sup>4</sup>The Court does not excuse Plaintiffs' hastiness on the fact that Plaintiffs only received  
 28 the Mexican Court's Order on December 13, 2007, which purportedly allows Plaintiffs to step  
 into the shoes of Alissimo/Resinas. Plaintiffs have not shown that they were unable to get this  
 Order any sooner. Nor have Plaintiffs attached a copy of the Order, translated or otherwise,  
 to their moving papers.

1 contrivance to the forthcoming California Court ruling, and may violate the Anti-  
2 Injunction Act. 28 U.S.C. § 2283; see also Hawaii Housing Authority v. Midkiff, 463  
3 U.S. 1323, 1325 (1983) (holding that where vital state interests are involved, a federal  
4 court should refrain from enjoining an ongoing state judicial proceeding unless  
5 extraordinary circumstances exist requiring equitable relief). Simply, in light of all the  
6 circumstances surrounding the motion, Plaintiffs' cursory analysis does not satisfy the  
7 Court that TRO relief is warranted.

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9 **B. Plaintiffs Do Not Show a Likelihood of Success on the Merits**

10 Plaintiffs argue that it is undisputed that CMA owes Alissimo and Resinas, as  
11 FlexTrim creditors, a substantial amount of money for goods and services rendered.  
12 (*Mot. for TRO 7.*) However, Plaintiffs are two Mexican labor unions whose  
13 constituents merely work for the two Mexican companies, in Mexico. Besides a  
14 Mexican Labor Court ruling giving Plaintiffs preferential rights over Alissimo/Resinas  
15 assets, it is unclear under California law whether Plaintiffs may "leapfrog" their  
16 employer and assert claims against CMA directly. See Fed. R. Civ. P. 17(a); Allstate  
17 Ins. Co. v. Hughes, 358 F.3d 1089, 1093-94 (9th Cir. 2004) (holding that, in a diversity  
18 suit, the court must apply substantive state law to determine the real party in interest).

19 Nor do Plaintiffs provide a copy of the Mexican Court's Order, or even cite  
20 authority showing that the Mexican Court's Order applies outside the borders of  
21 Mexico. In short, Plaintiffs leave many open questions<sup>5</sup> and provide no legal authority  
22 for the relief in which they seek. Thus, they cannot show that they are likely to  
23 succeed on the merits.

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28 <sup>5</sup>For example, Defendant's opposition raises significant questions over whether Allen Jones did in fact have control over Alissimo and Resinas, and whether those companies were represented in the California Court proceeding. (*Def.'s Opp'n 4.*)

1           **C. Plaintiffs Do Not Show Irreparable Injury**

2           Plaintiffs argue that irreparable injury will result if the California Court orders  
3 CMA to pay the bulk of FlexTrim's assets to receiver Murphy, thus denying  
4 Alissimo/Resinas's claims. (*Mot. for TRO 7.*) Plaintiff does not provide any legal  
5 authority for this claim.

6           Irreparable harm generally turns upon a substantial injury that is neither  
7 accurately measurable or adequately compensable by money damages. See, e.g., Willms  
8 v. Sanderson Cmtys., Inc., No. 07-CV-2366-LKK-GGH, 2007 U.S. Dist. LEXIS 85137,  
9 at \*4 (E.D. Cal. November 7, 2007) (citing Ross-Simons of Warwick, Inc. v. Baccarat,  
10 Inc., 102 F.3d 12, 18 (1st Cir. 1996)). In this case, Plaintiffs' harm is accurately  
11 measurable. Plaintiffs continuously reference the precise figure of \$896,389.81 and  
12 their proposed order requests that CMA be restrained from paying out that exact  
13 amount, not a penny more or less. Additionally, it is tough to imagine how Plaintiffs'  
14 alleged harm, not being paid, would not be adequately compensated by money  
15 damages. Cf. Phleger v. Countrywide Home Loans, Inc., No. 07-1686 SBA, 2007 U.S.  
16 Dist. LEXIS 86413 (N.D. Cal. November 16, 2007) (finding irreparable injury where  
17 plaintiff would lose her home to foreclosure auction if court did not grant TRO).

18           Because Plaintiffs do not show a likelihood of success on the merits, do not show  
19 irreparable injury, and provide the Court with incomplete facts and law, the Court finds  
20 it unnecessary to balance hardships at this time. From the information before the  
21 Court, no public interest factors appear to favor Plaintiffs. Accordingly, Plaintiffs' *ex*  
22 *parte* motion for a temporary restraining order is **DENIED**.

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24           **IV. CONCLUSION**


25           From the information currently before the Court, Plaintiffs have not alleged facts  
26 and circumstances sufficient to satisfy the requirements needed for a temporary  
27 restraining order. Accordingly, the Court **DENIES** Plaintiffs' Emergency Motion for  
28 Temporary Restraining Order. (Doc. Nos. 4, 5.) Nothing in this Order shall preclude



1 Plaintiffs or Defendant from moving for or opposing a temporary restraining order,  
2 preliminary injunction, or permanent injunction at some future date if circumstances  
3 so warrant.

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5 **IT IS SO ORDERED.**

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7 **DATED: December 20, 2007**

8   
9 Hon. Jeffrey T. Miller  
United States District Judge

10 for Hon. THOMAS J. WHELAN  
11 United States District Judge  
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